

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: PUBLIC WORKS (INCLUDING AIRPORT)

DATE: NOVEMBER 14, 2008

COMMITTEE MEMBERS PRESENT:	OTHERS PRESENT:
SUPERVISORS BELDEN	WILLIAM LAMY, SUPERINTENDENT OF PUBLIC WORKS
TESSIER	PAUL DUSEK, COUNTY ATTORNEY
STEC	HAL PAYNE, COMMISSIONER OF ADMINISTRATIVE & FISCAL SERVICES
MERLINO	JOAN SADY, CLERK OF THE BOARD
CHAMPAGNE	SUPERVISORS SIMMES
TAYLOR	SOKOL
	STRAINER
COMMITTEE MEMBERS ABSENT:	THOMAS
SUPERVISORS BENTLEY	VANNES
GOODSPEED	
	JULIE PACYNA, PURCHASING AGENT
VACANT: TOWN OF THURMAN	REPRESENTING EMPIRE EAST AVIATION:
	KIM LUSSIER, FBO
	WAYNE JUDGE, LEGAL COUNSEL
	JERRY CARUSO, C.P.A.
	REPRESENTING SCHERMERHORN AVIATION:
	RICH SCHERMERHORN, OWNER/OPERATOR
	JON LAPPER, LEGAL COUNSEL
	KAREN CARPENTER
	JONATHAN ALEXANDER, <i>THE ADIRONDACK JOURNAL</i>
	ALYSON MARTIN - <i>THE POST STAR</i>
	GORDON WOODWORTH - <i>THE CHRONICLE</i>
	AMANDA ALLEN, SR. LEGISLATIVE OFFICE SPECIALIST

Mr. Belden called the meeting of the Public Works Committee to order at 10:00 a.m.

As per the direction of the County Attorney, Mr. Belden noted that because the purpose of the meeting was to discuss the financial history of the two parties vying for the 2009 FBO (Fixed Base Operator) Contract, the majority of the Committee meeting would be held in executive session.

Paul Dusek, County Attorney, clarified that the discussions held during the executive session would be contained solely to the financial histories of Empire East Aviation and Schermerhorn Aviation. He advised that during the executive session, representatives of each company would be addressed separately with regards to financial information, and these matters were inappropriate for open session.

Wayne Judge, Counsel for Empire East Aviation, asked if the discussion on financial histories would be limited only to the corporations themselves, or if the personal finances of Kim Lussier, Empire East Aviation, and Rich Schermerhorn, Schermerhorn Aviation, would be discussed also. Mr. Dusek advised that the discussions with Empire East Aviation would concern the credit and financial history of the entity and it was possible that any parties having financial interest in Empire East Aviation might be addressed, as well. Discussions with Mr. Schermerhorn, he added, would be contained solely to the financial and credit history

of the particular entity applying for the FBO contract.

Motion was made by Mr. Tessier, seconded by Mr. Merlino and carried unanimously to declare executive session to discuss the financial history of particular companies, pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 10:02 a.m. to 11:01 a.m.

Upon reconvening, Mr. Dusek advised that other questions had arisen during the executive session which were financially related to the issue, but were not appropriate for the closed discussions. He said that because the meeting was now in open session, it was appropriate to address those questions, the first of which was whether or not the Self-Service Fuel Station promised by both FBO candidates was a financially feasible project for the Airport. Mr. Dusek added that it would be appropriate to receive comment from each of the candidates separately on the matter. He advised the legal counsel for each party, as well as the Committee members, that additional executive sessions could be requested if they felt any subject matter broached in the ensuing discussions was inappropriate for public discussion.

Mr. Lussier stated that in 2002 when the project was first suggested, an engineering report had estimated the cost of the Self-Service Fuel Station Project to be approximately \$115,000; however, he noted, that cost had increased to approximately \$171,000. After performing an independent study with regard to the payback on the Self-Fueling unit, Mr. Lussier stated that it would take about 40 years for the equipment to generate enough revenue to offset the costs incurred to construct it. He said that in light of the status of the current economy, the level of fuel sales were unstable and there was no way that he could determine the amount of fuel that would be sold in the future. As an example of the unstable market, Mr. Lussier apprised that an article had recently been printed regarding the lack of funding by Eclipse Jet, manufacturers of VLJ (very light jets), who'd had to send all of their employees home due to their inability to pay their salaries. He advised that it had been the hope of many involved with the Airport that increased jet traffic would be responsible for increasing revenues and air traffic, although it appeared that this was not to be. Mr. Lussier said that the original Project plans commissioned by the County had included the construction of a self-fueling facility which would tie into the existing fuel tanks owned by the County and he noted that he had determined the costs of the project to be much less, closer to \$100,000, if an independent unit was constructed at an alternate location with its own fuel storage tank. In addition, he noted that if the self-fueling facility was constructed as planned using the County's existing fuel tank, it might interfere with the taxiway traffic that traveled from the nearby t-hangars.

Mr. Dusek pointed out that as he recalled, the Empire East Aviation FBO bid stated that they would contribute up to \$50,000 to the procurement of a self-fueling facility and Mr. Lussier said that this was correct. Mr. Lussier added that at the beginning of the Project, all parties had been encouraged to proceed in light of the grant funding available; however, he said, it was his opinion that the grant funding would not be realized due to the state of the economy and the budgetary reductions occurring at the State level. Mr. Dusek then questioned if the Self-Fueling Facility could realistically be constructed using a separate tank for a total of \$50,000 and Mr. Lussier replied in the negative, noting that the tank alone would cost that much. He advised that costs in the neighborhood of \$100,000 would be reached by the time the Project was completed as additional engineering services would be required for the alternate site.

Mr. Taylor asked if the Self-Fueling Facility was necessary to Airport business and Mr. Lussier replied in the negative. He explained that the majority of the pilots visiting the Airport preferred to have their aircrafts fueled for them and this would be a convenience offered to pilots wishing to fuel their aircrafts after hours. Mr. Lussier apprised that the Saratoga County Airport had a Self-Fueling Facility in place and it was the opinion of many of the individuals he had spoken with that they did not like the system because it was inconvenient and was not easy to use. He added that many of the pilots landing at the Airport were dressed in business attire and were not interested in handling the fueling equipment.

Mr. Strainer noted that when discussion had begun for the 2009 FBO contract both candidates had agreed to fund and construct a Self-Fueling Facility in some manner and he questioned when the decision had been made to require them to install storage tanks as well. He noted that this seemed to be a considerable cost and he did not feel that it was fair to add this requirement. Mr. Dusek clarified that the installation of a separate storage tank and fuel pump had been suggested by Mr. Lussier as an alternative, and less expensive, method to implement the Self-Fueling Facility. He added that this equipment was not being mandated by the County as part of the FBO contract. Mr. Lussier advised that during the first interviews respective to the FBO contract he had agreed to partner with the County in construction of the Self-Fueling Facility, unaware of what the total costs would be or the amount of time that it would have to be in place to earn enough revenue to recoup his investment.

Discussion ensued.

Mr. Schermerhorn countered that he felt the Self-Fueling Facility was a good idea and would increase the ability to offer competitive fuel rates. He noted that although a system using a separate fuel tank and pump would cost much less, he was willing to implement whichever option was favorable to the County. Mr. Schermerhorn said that if the Committee determined that the Self-Fueling Facility was not worth the investment, he would use the money pledged for the system to make improvements elsewhere at the Airport. He stated that he recognized a considerable opportunity for the Airport to grow and generate increased revenues and had chosen to invest in the Airport for those reasons. Mr. Schermerhorn then read aloud from the letter he had received from Jet Management, LLC thanking him for the recent tour of the Schermerhorn Aviation hangar facility and noting the favorable impression that had been made; the letter also advised of their interest in leasing hangar space from Schermerhorn Aviation for their two large jets, valued at \$15 million each. Mr. Schermerhorn noted that each of the jets held 1,930 gallons of fuel and that Jet Management, LLC had purchased \$70,000 in fuel for those jets from the hangar where they had been stored during the previous year. He advised that the Self-Fueling Facility would be a positive facet for the Airport as it would allow for planes to be fueled at any time. In addition, Mr. Schermerhorn noted that he intended to install security cameras at the Self-Fueling Facility and around the rest of the Airport for his own protection, as well as the County's. Due to the state of the economy, Mr. Schermerhorn said that he would offer very competitive hangar and fuel rates in order to draw patrons to the Airport. He assured the Committee that the fuel costs charged would not affect the County as they would be paid the flat fee of 7.5 cents per gallon sold, regardless of the business generated. Mr. Schermerhorn continued to state that he intended to generate additional general aviation business while drawing jet traffic to the area. He concluded that his substantial investment in the Airport proved his commitment to the facility and his belief in its potential to grow and prosper.

Mr. Dusek asked Mr. Schermerhorn if the profits received from the use of the Self-Fueling Facility would

offset the costs for its construction. Mr. Schermerhorn replied that although it would take a considerable number of years for the revenues received from fuel sales at the Self-Fueling Facility to offset its costs, he felt that the costs would be offset in other ways, such as through increased air traffic due to the convenience of self fueling abilities and the constant availability of fuel. He reiterated that the use of the Self-Fueling Facility would allow for lower fuel prices to be offered, which would be amenable to both jet and general aviation traffic. In these ways, he concluded, the Self-Fueling Facility would pay for itself over time.

Mr. Belden asked Mr. Schermerhorn if he intended to increase the Airport's hours of operation to allow for 24-hour landings and departures and Mr. Schermerhorn replied in the negative. However, he noted, if the need arose to extend the hours of operation in the future, he would not be opposed to doing so. Mr. Schermerhorn advised that as the FBO he would work with the Airport Manager to make the Airport the best facility it could be. He added that he would like to increase the level of services offered at the Airport as he foresaw room for improvement in the current operations. Mr. Schermerhorn stated that the outlook for aviation income was not high currently and he noted that this was the reason he had increased his guaranteed minimum payment to the County to \$70,000; he added that even if he did not sell any fuel, this amount would be paid to the County.

Mr. Taylor asked Mr. Schermerhorn what his role in the FBO would be and Mr. Schermerhorn replied that he would take a hands on role in the operation of the Airport. He added that he had received several applications from persons interested in working with Schermerhorn Aviation as the County's chosen FBO, some of whom were previously employed by Albany International Airport that had been removed from their positions during unexpected cutbacks. Mr. Schermerhorn stated that he had chosen two applications who were very well respected and would do an excellent job in assisting the operations of the FBO. He advised that another important aspect would be the accounting operations as the Airport would require organized auditing trails. Mr. Schermerhorn stated that he intended to implement a bookkeeping staff to account for those needs and he assured the Committee that separate accounting books would be kept for the Airport which would be available to anyone wishing to review them. He said that he would be heavily involved in the operation of the Airport due to the considerable investment he had made in the facility. Mr. Schermerhorn advised the Committee that as FBO, he would address any and all concerns raised regardless of the source; he added that through his current ventures he managed over 1,000 tenants and he understood the principals of addressing concerns and complaints.

Mr. Belden apprised that he had received a telephone call from a pilot who was concerned that the Airport restaurant would be closed if the FBO contract was awarded to Schermerhorn Aviation. Mr. Schermerhorn replied that this was a completely false statement and he asserted that the restaurant would remain open. He added that he had received several calls from staff working at the restaurant currently with respect to their future as employees at the site. Mr. Schermerhorn advised that if chosen for the FBO contract he would have no issue with retaining the current staff, provided that the restaurant operation continued to run smoothly.

Mr. VanNess questioned if the FBO services would be sub-leased to another entity and Mr. Schermerhorn replied in the negative, explaining that he would run the FBO and would hire a General Manager, as well as a Line Service Manager, who would work under his direction. He advised that he had no partners in any of his ventures; therefore, he said, he oversaw all operations and made all business decisions himself which made the process much quicker and less complicated.

Mr. Champagne noted that the County was interested in continuing to lease property for the construction of t-hangars and he asked if Mr. Schermerhorn would continue that effort. Mr. Schermerhorn stated that he would assist in the effort, provided that a demand for the construction of t-hangars was shown. He noted that he currently had room in his own full service t-hangar for another 10 to 12 aircrafts and once those spaces were filled and the demand for t-hangar space continued to grow, he would consider the matter further. Mr. Schermerhorn concluded that he would not be willing to commit himself to the additional construction until demand for such was realized.

Mr. Merlino stated that although he was new to the Public Works Committee, he had performed some research on the issues between Empire East Aviation and Schermerhorn Aviation and it appeared that the two groups spent more time working through their attorneys than trying to develop a reasonable working relationship. He said that it was unfortunate that the two groups could not make a better effort to work together as he felt that they could have made an outstanding team with Empire's small town impression and Schermerhorn's marketing and advertising abilities. Mr. Merlino noted that determining the holder of the 2009 FBO contract would be a very tough decision for him as although there was overwhelming support for Empire East Aviation from the Pilot community, it appeared that choosing Schermerhorn Aviation would be the best avenue for future growth at the Airport.

When questioned on the ability to have multiple FBO's in place at the Airport, Mr. Dusek apprised that FAA (Federal Aviation Administration) regulations indicated that exclusivity should not be allowed at the Airport; however, he said, he recalled that certain notations were made in the regulations which said that there could be more than one FBO in place but there were limiting factors as to whether or not the FBO status could be obtained. Mr. Dusek stated that the ability to obtain FBO status from the FAA was not within the County's control if the person applying for such already had a status at the Airport, such as Mr. Schermerhorn did. He said that if he so desired, Mr. Schermerhorn could most likely obtain FBO status from the FAA although he could not attest to whether or not Mr. Schermerhorn intended to do so or if he would be successful in the attempt.

Mr. Stec asked Mr. Schermerhorn if he would seek FBO status from the FAA if he was not awarded the 2009 FBO contract with the County and Mr. Schermerhorn replied affirmatively. He noted that although he had previously explored this possibility, he had decided to wait and apply for the FBO contract prior to pursuing this alternative option. Mr. Schermerhorn stated that he would prefer to secure the FBO contract with the County rather than starting a new FBO , but intended to secure the title either way in light of his investment in the Airport.

Returning to the question of the t-hangar space available at the Airport, Mr. VanNess stated that if Schermerhorn Aviation secured the FBO contract, he hoped that t-hangar space would be made available to those pilots seeking to store their aircraft in a more self-service setting, rather than confining them to the use of the full-service amenities offered by Mr. Schermerhorn.

Mr. Judge stated that Mr. Lussier had no issue with Mr. Schermerhorn obtaining an FBO designation and operating from the Airport. He then noted that the infrastructure was already in place to operate the Airport; however, he noted, an experienced FBO Manager with the proper equipment, tools and an extensive network of suppliers and vendors was required. Mr. Judge said that if the County chose to proceed with Empire East Aviation as the FBO for 2009, the transition would be seamless and the Committee could

rest assured that the commendable services provided by Mr. Lussier and his staff in the past would be carried into the next contract term. He then questioned why the resumes of the two "highly recommended" persons Mr. Schermerhorn intended to hire were not distributed to the Committee members so that they would be afforded the opportunity to make their decision based on facts and background checks, rather than depending on Mr. Schermerhorn's judge of character.

Mr. Schermerhorn reminded the Committee that Empire East Aviation had previously sought out a lease agreement with the County to construct t-hangars at the Airport and he questioned why this project had yet to begin. Mr. Dusek advised that both D.A. Collins and Empire East Aviation had sought out land leases simultaneously for t-hangar construction. He noted that while D.A. Collins had already signed their lease agreement and had begun construction, Empire East Aviation had yet to sign their lease agreement; therefore, he said, they were unable to begin the construction portion of the t-hangar project.

Mr. Dusek advised that another question raised during the executive session had been the differences in financial guarantees required between the FBO contract and the land leases for t-hangar construction. He said that the t-hangar land leases had been structured differently because they included only a lease of County-owned property. Mr. Dusek explained that the financial requirements included with the FBO contract were much more extensive because the County was leasing the Airport facilities owned by the County and they were concerned with the level of service provided by the FBO, as this was the primary face of the County at the Airport. He added that the land leases required only a letter of credit to protect the County in ensuring that the t-hangers were constructed, as well as enforcing that if payment was not made to the County as included in the lease, the t-hangers could be foreclosed upon. Mr. Dusek stated that because these were simply land leases they were structured completely different than the FBO contract.

Assuming that the demand for t-hangars continued to grow, Mr. Champagne asked if the County would have the right to seek out a developer interested in constructing t-hangars at the Airport in the event that the FBO did not do so and Mr. Dusek replied affirmatively.

Mr. VanNess questioned whether financial statements had been received from Empire East Aviation with respect to their land lease and Mr. Dusek replied in the negative, noting that the letter of credit was not required until the lease was signed. He added that it was his understanding that the lease had not been signed as Empire was awaiting paving services around the proposed t-hangar site which were to be provided by the County but would not be started until 2009. Mr. Lamy asked if the paving had been done by the County before t-hangar construction in previous projects and Mr. Lussier replied in the negative. Mr. Belden stated that typically, paving would be done subsequent to the construction so that the blacktop was not affected by large machinery during the construction process.

Discussion ensued.

In response to a personal barb made by Mr. Judge, Mr. Schermerhorn stated that he had tried to remain as professional as possible in all of his dealings with Empire East Aviation and the County with respect to the FBO contract, but felt he needed to respond in kind. Mr. Schermerhorn then cited instances when persons having financial interest with Empire East Aviation had contacted him asking that he retain Mr. Lussier's services as FBO Manager so that their interests would not be negatively affected. He also apprised of disagreements between himself and Mr. Lussier when one of his clients had sought out mechanical services

for their jet through a source other than Empire East Aviation and again when his inquiry for the tail letters of those aircraft using his t-hangar for bookkeeping purposes was denied by Mr. Lussier.

Mr. Lussier countered that he had refused to forward the tail letters requested by Mr. Schermerhorn based on the fact that many pilots flying into the airport requested anonymity. He advised that if Mr. Schermerhorn had been willing to sign a confidentiality agreement he would have been willing to forward the information requested. Furthermore, Mr. Lussier pointed out that Mr. Schermerhorn had been included on the insurance secured by Empire East Aviation for some time with no written contract between the two groups. He said that he had sent several contracts to Mr. Schermerhorn but none had been signed or returned. When it became apparent that a liability issue might exist for Empire East Aviation, Mr. Lussier said that he had forwarded notice to Mr. Schermerhorn that he would be required to secure alternate insurance for himself, to which Mr. Schermerhorn had replied that the services of Empire East Aviation were no longer required. He concluded that although Empire East Aviation had been willing to cooperate with Schermerhorn Aviation, the lack of a working agreement and the presence of liability issues had curtailed those efforts.

Mr. Strainer stated his discomfort with the fact that issues discussed in the executive session had surfaced during the open session and that personal issues had been aired at the public meeting. He stated that his decision as to who should secure the 2009 FBO contract would be based on a business perspective as to which was the better financial decision for the County. Mr. Strainer noted that the personal attacks and information expressed during the meeting would have no bearing as to the party he voted for to serve as FBO. Mr. Stec agreed with this statement, adding that the decision had to be the one that was best for the taxpayers. He asked the Committee members to keep in mind that the County's 2009 contribution to the Airport was budgeted at \$738,979, which represented a cost to the taxpayer in excess of \$13,000 per aircraft currently housed at the Airport.

As there was no further business to come before the Public Works Committee, on motion made by Mr. Tessier and seconded by Mr. Champagne, Mr. Belden adjourned the meeting at 12:12 p.m.

Respectfully submitted,
Amanda Allen, Sr. Legislative Office Specialist